

THE ROLE OF GOVERNMENT IN INSURING QUALITY CONTROL IN NURSING HOMES

A. Introduction

The purpose of this introduction is to identify and describe the roles and responsibilities of the respective groups having a part in the licensure, regulation and monitoring of nursing homes in North Carolina. It outlines procedures by which the various agencies, organizations and individuals will conduct their separate and joint functions. The Division of Facility Services has responsibility for licensure and certification of nursing homes. The Division of Medical Assistance, the State Ombudsman, the Regional Ombudsman and the Nursing Home Community Advisory Committees (NHCAC's) also have roles and responsibilities related to the oversight of nursing homes. Further, boards of county commissioners, nursing home administrators, and NHCAC's also have important roles in the implementation of the Patients' Bill of Rights. In addition, the County Departments of Social Services have statutory responsibility for the investigation of the individual adult protective service (i.e. abuse, neglect, misappropriation) cases in nursing homes.

B. State Licensing

All states have laws requiring providers of nursing home services to be licensed in order to operate. North Carolina's licensing regulations are established by the N.C. Medical Care Commission and are enforced by the Department of Human Resources.

Direct responsibility for ensuring compliance with State regulations and standards rests with Department of Health and Human Services' Division of Facility Services. Within the Medical Facilities branch, the Licensure and Certification Section conducts initial licensure surveys as well as, surveys facilities not certified to receive Medicare or Medicaid (there are 19 non-certified nursing homes). The Licensure and Certification Section also conducts limited surveys in problem facilities.

Registered nurses, pharmacists, dietitians, and administrative personnel conduct the inspections of nursing homes along with engineers or others familiar with the physical aspects of the nursing home. As a part of the survey, the inspection teams make certain that the nursing home is in compliance with the Patients' Bill of Rights.

C. Federal Certification

In order for a nursing home to participate in either Medicaid or Medicare programs it must be "federally certified" in addition to the licensure requirements outlined above. Certification surveys are conducted annually by federally trained survey teams located within the Licensure and Certification Section of the Division of Facility Services of the State Department of Health and Human Services, and is a separate function from the inspections for receiving a license.

There are 57 field staff who do all routine monitoring of nursing homes for compliance with federal certification requirements. Registered nurses, pharmacists, dietitians, and administrative personnel conduct the inspections of nursing homes along with engineers or others familiar with the physical aspects of the nursing home. The survey teams, as a part of their monitoring, make certain that the nursing home is ensuring that residents' rights are being respected. A facility must be certified to receive reimbursement from the Medicaid or Medicare programs. A nursing facility must maintain compliance with the federal standards in order to be reimbursed for residents covered by Medicaid and/or Medicare.

Nursing homes are not required to participate in either Medicaid or Medicare but if they participate in Medicaid they must participate in Medicare. If you are not sure whether the nursing homes in your area participate, you should ask the administrator of the home or the Division of Facility Services (DFS). (Note: The fact that a facility is certified for Medicare does not necessarily mean that Medicare will pay for nursing home care for persons otherwise eligible for Medicare services. Complicated medical criteria determine this on an individual basis).

All information concerning the certification inspections is maintained in the Licensure and Certification Section in the Division of Facility Services, and is forwarded to the U.S. Department of Health and Human Services. When deficiencies are found, there is a wide variety of enforcement mechanisms available. [See Enforcement Section Below].

Matters concerning the Medicaid program can be handled by the County Department of Social Services or the State Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603.

D. Enforcement

When a nursing home is found to be out of compliance with any regulation or standard (including patients' rights violations) the facility is "cited for a violation." The facility must then submit a response/plan of correction to the state agency for approval. A subsequent re-survey of the facility is conducted to make certain the corrective action was implemented. ******Wendy will type in description of IDR process here.******

The enforcement tools available to remedy noncompliance with state and federal law vary. The list of remedies that the state can impose under state licensing law for substantial noncompliance with applicable laws and rules include:

- (1) reducing a facility from a full to provisional license;
- (2) suspending new admissions;
- (3) appointing a temporary manager to operate a facility;
- (4) revoking the license of a facility;
- (5) summarily suspending a license and relocating the residents without prior due process in the event that there are imminent life-threatening conditions in a facility;

- (6) imposing civil monetary penalties whose amount depends on the seriousness and risk of harm to residents.

Federal enforcement mechanisms include:

- (1) directed plans of correction, including directed inservice training;
- (2) state on site monitoring;
- (3) denial of payment for new individuals;
- (4) denial of payment for all individuals;
- (5) temporary management;
- (6) termination from the Medicare/ Medicaid programs;
- (7) civil monetary penalties ranging from \$50.00 to \$10, 000.00 a day.

[See Appendix J for a discussion and comparison of the state and federal penalty process.]

It is important then for members of the NHCAC to be at least generally familiar with the various requirements for the licensure and certification of nursing homes. Members must be especially familiar with the Patients' Bill of Rights section and any questions should be directed to the Regional Ombudsman, the State Ombudsman, the Division of Facility Services, or the administrator of the nursing home.

E. Government Complaint Investigation

The Complaints Investigation Branch (CIB), in the Division of Facility Services, Medical Facilities Licensure and Certification Section also receives and investigates individual complaints about resident care in skilled, intermediate and combination facilities within the purview of North Carolina General Statutes, Chapter 131E, Article 6 which includes the Nursing Home Licensure Act and the Nursing Home Patients' Bill of Rights.

The CIB staff investigates complaints about nursing homes and responds to complainants within a reasonable time, not to exceed 60 days. Reports of alleged abuse, neglect or exploitation regarding specifically named people in a nursing home, combination home, or adult care home should be made to the department of social services adult protective services (APS) worker in the county in which the home is located. The APS worker will investigate the case and take immediate actions to protect a resident if necessary and will also notify the Division of Facility Services. These cases would come under the Adult Protective Services Law (See Appendix A for a copy of this law).

If non-compliance with the Nursing Home Licensure Act or Rules and Regulations for the Licensing of Nursing Homes is substantiated in a complaint investigation, a written citation is given to the facility. A written response stating how and by what date the deficiency will be corrected is required of the facility. Division of Facility Services (DFS) staff makes an unannounced follow-up visit to ensure that deficiencies cited are corrected. Complaint investigation reports are also a matter of public record after confidential information has been deleted. A committee desiring a report from DFS on its findings in a complaint investigation should request it at the time the referral is made.

F. Admissions Procedures

All nursing home patients/residents must first be referred by a physician licensed to practice medicine in North Carolina before they are admitted to a nursing home. Once the referral is made the resident who expects Medicaid coverage must be approved for financial eligibility by the local Department of Social Services and the resident must have prior approval by the Division of Medical Assistance to ascertain whether the resident is medically qualified for Medicaid; then the appropriate level of care must be authorized. No resident may be admitted to a nursing home without prior approval if the care is being paid for by the Medicaid program, unless payment is handled privately during the interim. For Medicare recipients, the facility will notify the resident as to whether Medicare will pay for that level of care for him/her.

Once the admission is made, specific periodic reviews by the Medicaid and Medicare program are required to make sure the proper level of care is maintained. Nurses and physicians regularly monitor the level of care. Discharge from the facility can result when levels of care are changed, and when the resident depends on Medicare and/or Medicaid to pay for their care. When the resident has been classified at a lower level of care, he/she may remain in the higher level of care pending appeal. The resident who loses that appeal must move to the lower level of care unless he/she chooses to pay the higher rate "out of pocket."

Each facility participating in the Medicaid program must also conduct an in-house review to monitor, on a more frequent basis, the appropriate level of care. These reviews are conducted to utilize Medicare and Medicaid resources in the most efficient manner.

Residents or their families who are dissatisfied with the determinations made on the level of care can appeal the decisions through the Division of Medical Assistance for Medicaid. Residents or their families who are dissatisfied with Medicare coverage determination can appeal the decisions through the Social Security Administration.

Resources: *Division of Facility Services*
Licensure Section
701 Barbour Drive
Post Office Box 29530
Raleigh, N.C. 27626-0530
(919) 733-5794 Health Care Facilities Branch
(919) 733-6360 Certificate of Need Section
(919) 733-8499 Complaint Investigation Branch
(919) 733-7461 Licensure and Certification Section
1(800) 624-3004 DFS Complaint Hotline

Medical Review of North Carolina, Inc. (MRNC)
P.O. Box 37309
Raleigh, N.C. 27627-7627 [1-800-722-0468]

MNRC is the Peer Review Organization (PRO) for the State of North Carolina. MRNC has the contract with Medicare to ensure that Medicare patients receive quality medical care from doctors, hospitals, skilled nursing facilities, outpatient centers, and home health agencies.

Social Security Administration
Provides information about eligibility for Social Security, SSI, and Medicare benefits, and about the location of the nearest SSA office; can provide a copy of the *Medicare Handbook*.
1-800-772-1213

Blue Cross/Blue Shield of North Carolina

Additional Resources:

North Carolina Health Care Facilities Association
5109 Bur Oak Circle
Raleigh, N.C. 27612
(919) 782-3827
(For profit nursing homes)

North Carolina Association of Non-Profit
Homes for the Aging
3301 Woman's Club Drive, Suite 145
Raleigh, N.C. 27612
(919) 571-8333

G. Long Term Care Ombudsman Program

The Nursing Home Patients' Bill of Rights in addition to providing for enforcement of these rights by the North Carolina Division of Facility Services, establishes an oversight and mediator/negotiator role for NHCAC's. As a part of the ombudsman program, the committees provide the primary point of contact for residents of nursing homes to ensure the implementation of the Bill of Rights. The following description outlines the functions of the elements that make up the ombudsman program.

1. State Long Term Care Ombudsman /North Carolina Division of Aging

On the state level, the ombudsman program is administered by a State Long Term Care Ombudsman in the Division of Aging who has responsibility for the following:

- a. Certifying a person to serve as Regional Ombudsman in each of the multi-county planning and service areas in the state. The Division is also responsible for providing these Regional Ombudsmen with information, guidelines, training and consultation.
- b. Appointing persons to serve on the Nursing Home Community Advisory Committees when full committee membership is not set by local boards of county commissioners.
- c. Providing information, guidelines, training and consultation to the Nursing Home Community Advisory Committees, in conjunction with the Regional Ombudsmen, to direct them in the performance of their duties.
- d. Investigating and resolving complaints made by or for older persons in long term care facilities that may affect their health, safety, welfare or rights. This responsibility is primarily delegated to the Regional Ombudsman and the Nursing Home Community Advisory Committee with assistance from the Regional Ombudsman.
- e. Monitoring the development and implementation of federal, state, and local laws regulations and policies pertaining to long term care including nursing homes.
- f. Providing information to public agencies about concerns of older persons in long term care facilities.
- g. Conducting other activities consistent with the requirements of the Older Americans Act of 1965, as Amended, such as the establishment of procedures to ensure appropriate access to long term care facilities, residents and records and to ensure that confidentiality and disclosure requirements are met. Also, the state agency is responsible for establishing a statewide uniform reporting system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of identifying and resolving significant problems.

2. Regional Long Term Care Ombudsman

In each of the area agencies on aging in our state, a Regional Long Term Care Ombudsman is the connecting link between the State Long Term Care Ombudsman and the Community Advisory Committees. The Regional Ombudsman is responsible for the following:

- a. Assisting in the organization of Nursing Home Community Advisory Committees (NHCAC's) as nursing homes are established in a county for the first time.
- b. Providing training, technical assistance and administrative support to the NHCAC's.
- c. Monitoring the activities of the NHCAC's to verify that each is performing its proper role.
- d. Investigating and helping to resolve complaints made on behalf of nursing home residents, when the regional ombudsman receives the complaint directly, the NHCAC refers the complaint to the regional ombudsman and at the direction of the State Ombudsman when this intervention is deemed appropriate.
- e. Providing non-confidential information to community agencies and organizations, citizens groups, nursing providers and the general public about issues pertaining to residents of nursing homes.
- f. Maintaining records (e.g., committee minutes, NHCAC quarterly visit reports) and preparing reports, including a compilation and analysis of complaint information, for use by the State Ombudsman and the Nursing Home Community Advisory Committees.
- g. Maintaining a list of committee members and the dates of expiration of their terms, and filing this information with the State Ombudsman and the county Departments of Social Services. Filing new appointments and the designated terms of office with these agencies/persons within 30 days after their appointment.
- h. Disseminating information received from the Division of Aging to committee members.

3. Nursing Home Community Advisory Committee

The Nursing Home Community Advisory Committee is responsible for the following:

- a. Apprising itself of the general conditions of nursing home care, to include conducting at least one quarterly visit to all nursing homes.
- b. Promoting community involvement with nursing homes and their residents to enhance the quality of life for the residents.
- c. Promoting education and awareness of the operation of nursing homes and the needs of the aging and disabled persons residing in these homes, to include reporting at least annually its appraisal of nursing home care to the local Board of County Commissioners, Regional Ombudsman, and the Division of Aging.
- d. Submitting quarterly reports and complaint investigation reports to the Regional Ombudsman and the State Ombudsman. The Regional Ombudsman can assist in this important responsibility of the committee.
- e. Establishing linkages with the nursing home administrators for the purpose of maintaining the intent of the Nursing Home Patients' Bill of Rights.
- f. Assisting persons who have grievances with nursing homes and facilitating the resolution of grievances at the local level.
- g. Notifying the county Department of Social Services of all reports of abuse, neglect, or exploitation of residents.
- h. Advocating on behalf of residents in the county who currently reside in nursing homes as well as those in need of nursing home care.

H. Functions of Agencies Involved In Monitoring Nursing Home Care

DEPARTMENT OF HEALTH AND HUMAN SERVICES

<u>DIVISION OF FACILITY SERVICES</u>	<u>DIVISION OF MEDICAL ASSISTANCE</u>	<u>DIVISION OF AGING</u>	<u>DIVISION OF SOCIAL SERVICES</u>
Licensure & Medicare/Medicaid Certification	Medicaid Program EDS-F	Long-term Care Ombudsman Program	Adult Protective Services Program
Enforcement of regulations and Bill of Rights	Prior Approval and Level of Care Assessment	Nursing Home Community Advisory Committees	Local Departments of Social Services
		Maintain Spirit of Patients' Bill of Rights	Enforcement of Adult Protective Services.

DEPARTMENT OF ENVIRONMENT, HEALTH and NATURAL RESOURCES

DIVISION OF HEALTH SERVICES

Sanitation

Local Departments
of Health Services

Grades Nursing Homes
on Sanitation